



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO. 552 OF 2012

CONSOLIDATED WITH PETITIONS NOS 554, 573 & 579 OF 2012

BETWEEN

INTERNATIONAL CENTRE FOR POLICY

& CONFLICT & 4 OTHERS.....1ST PETITIONER

CHARLES NDUNGU MWANGI.....2ND PETITIONER

PUBLIC PROCUREMENT ETHICS & GOVERNANCE.....3RD PETITIONER

HENRY NYAKUNDI NYANGAYA.....4TH PETITIONER

KENYA HUMAN RIGHTS COMMISSION.....5TH PETITIONER

INTERNATIONAL COMMISSION OF

JURISTS, KEYA 6TH PETITIONER

AND

THE ATTORNEY GENERAL.....1ST RESPONDENT

**INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION.....2ND RESPONDENT**

UHURU MUIGA KENYATTA.....3RD RESPONDENT

WILLAM SAMOEI RUTO.....4TH RESPONDENT

JAMES ONDICHO GESAMI.....5TH RESPONDENT

RULING

1. By a judgment delivered on 15th February 2013, the court awarded costs of the petition to the 5th respondent to be paid by the 4th petitioner. Consequently, the 5th respondent filed a bill of costs dated 11th March 2013 for the taxation of his costs against the 4th respondent.
2. The 5th respondent's Notice of Motion dated 14th June 2013 is a reference objecting to the decision of the taxing officer given on item 1 of the bill of costs being the instruction fee sought. In the said bill of costs, the 5th respondent sought the sum of Ksh. 2,000,000.00 as instruction fees. The taxing officer, taxed off Ksh. 1,600,000.00 thereby assessing the instruction fee at Ksh. 400,000.00 only. Item 3, which is the getting up fee, which is also contested, is dependent of the instruction fee.
3. The 5th respondent is now dissatisfied with the reasons given by the learned Deputy Registrar dated 10th May 2013 in which she set out the principles guiding her discretion and concluded as follows; *"In the instant case, the amount of Kshs, 2,000,000/= which the 4th respondent is seeking is excessive. The 4th respondent has not demonstrated that this case was complex. Taking into account the above factors, Kshs 400,000/= is reasonable in respect of instruction fees. I tax off Kshs 1,600,000/= on him."*
4. The principles upon which the court may interfere with the learned Deputy Registrar's discretion are now well settled. In ***Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board Nairobi Civil Appeal No. 220 of 2004 [2005]eKLR***, the Court of Appeal stated that, *"the judge will not normally interfere with the exercise of discretion by the taxing officer unless the taxing officer, erred in principle in assessing costs."*
5. In my view and I agree with the applicant, the learned taxing officer failed to take into account or address herself to the factors set out in the **proviso (1) to Schedule VIA(1)** of the ***Advocates Remuneration Order***. Although the learned Deputy Registrar addressed the various authorities that elucidated how her discretion ought to be exercised, she failed to consider the factors and apply them to the case at hand.
6. Further, the learned Deputy Registrar concluded that the amount claimed was excessive without setting out or establishing a basis for the finding that the amount claimed was excessive. She also found without setting out the reasons for her conclusion that the matter was not complex.
7. In the ***Kipkorir, Titoo & Kiara Case (supra)***, the Court of Appeal added that; *"We have no doubt that if a taxing officer fails to apply the formula for assessing fees or costs specified in schedule VI or fails to give due consideration to all relevant circumstances of the case particularly the matters specified in the proviso (i) of schedule VIA(1), that would be an error in principle."*
8. Likewise, I find and hold that the learned Deputy Registrar erred in principle by failing to take into account and apply the factors elaborated in **proviso (1) of schedule VIA(1)** of the ***Advocates Remuneration Order*** in coming to the conclusion that the amount sought was excessive and that the matter was not complex. I am therefore entitled to interfere with her decision.
9. I therefore make the following Order;
 - i. **The decision dated 10th May 2013 is set aside to the extent of Item 1 and 3 of the Bill of Costs dated 11th March 2013.**
 - ii. **The taxation shall proceed before a different taxing officer.**
 - iii. **There shall be no order as to costs.**

DATED and DELIVERED at NAIROBI this 23rd day of August 2013.

D.S. MAJANJA

JUDGE

Mr Thiga instructed by Waruhiu K'Owade and Nga;ng'a Advocates for the 5th respondent.